

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 21, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ZACHARY N.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

No. 2:21-CV-00066-JAG

ORDER GRANTING  
DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 18, 19. Attorney Dana Madsen represents Zachary N. (Plaintiff); Special Assistant United States Attorney Sarah Moum represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

## I. JURISDICTION

Plaintiff filed an application for Disability Insurance Benefits on May 16, 2019, alleging disability since September 28, 2018, due to social phobia, PTSD, arthritis, bad hip, and degenerative disc disease. Tr. 68. The application was denied initially and upon reconsideration. Tr. 97-99, 104-10. Administrative Law Judge (ALJ) MaryAnn Lunderman held a hearing on September 1, 2020, Tr. 32-66, and issued an unfavorable decision on September 25, 2020, Tr. 15-26. Plaintiff requested review from the Appeals Council and the Appeals Council denied the request for review on December 2, 2020. Tr. 1-5. The ALJ's September 2020 decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on January 29, 2021. ECF No. 1.

## II. STATEMENT OF FACTS

The facts of the case are set forth in detail in the transcript of proceedings and only briefly summarized here. Plaintiff was born in 1977 and was 41 years old as of his alleged onset date. Tr. 68. He has a high school education and served in the military for 17 years, as an aircraft crew chief. Tr. 40-41, 55-58. He medically retired from the military in 2018 due to back problems and mental health, and has since been rated 100% disabled by the VA. Tr. 41, 48, 289, 827. At the time of his hearing in September 2020, he was scheduled to have a lumbar fusion in a few months. Tr. 46, 837, 917.

## III. STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error.

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
 2 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
 3 1098. Put another way, substantial evidence is such relevant evidence as a  
 4 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
 5 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
 6 rational interpretation, the Court may not substitute its judgment for that of the  
 7 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
 8 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
 9 administrative findings, or if conflicting evidence supports a finding of either  
 10 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
 11 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
 12 supported by substantial evidence will be set aside if the proper legal standards  
 13 were not applied in weighing the evidence and making the decision. *Browner v.*  
 14 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

#### 15 IV. SEQUENTIAL EVALUATION PROCESS

16 The Commissioner has established a five-step sequential evaluation process  
 17 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*  
 18 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant  
 19 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d  
 20 at 1098-1099. This burden is met once a claimant establishes that a physical or  
 21 mental impairment prevents the claimant from engaging in past relevant work. 20  
 22 C.F.R. § 404.1520(a)(4). If a claimant cannot perform past relevant work, the ALJ  
 23 proceeds to step five, and the burden shifts to the Commissioner to show (1) the  
 24 claimant can make an adjustment to other work; and (2) the claimant can perform  
 25 specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec.*  
 26 *Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an  
 27 adjustment to other work in the national economy, the claimant will be found  
 28 disabled. 20 C.F.R. § 404.1520(a)(4)(v).

## V. ADMINISTRATIVE FINDINGS

On September 25, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act.

At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful activity since the alleged onset date. Tr. 18.

At **step two**, the ALJ determined Plaintiff had the following severe impairments: degenerative disc disease of the lumbar spine, degenerative joint disease of the 1st metatarsophalangeal joint, depressive disorder, and PTSD. *Id.*

At **step three**, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 18-19.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found he could perform work at the light exertional level, with the following additional limitations:

[T]he climbing of ramps and stairs must be limited to frequently, while kneeling, crouching (bending at the knees), the climbing of ladders, ropes and scaffolds, stooping (bending at the waist), and crawling must be limited further to occasionally and balancing is unlimited. With the right upper extremity, overhead reaching must be limited to frequently. Within the assigned work area there must be less than occasional exposure to concentrated hazards, such as machinery and heights. The assigned work must be limited to simple unskilled tasks with a SVP of 1 or 2 and reasoning level of 1 or 2. Assigned tasks must be learned in 30 days or less or by a brief demonstration and the assigned work must have minimal change in the tasks as assigned. The assigned work must require no more than occasional brief intermittent work related contact with coworkers, supervisors and the public. In addition, the assigned work must be performed primarily independently, not as a member of team or crew, and there must be minimal change in the assigned work setting.

Tr. 19-20.

At **step four**, the ALJ found Plaintiff was unable to perform his past relevant work as a crew chief, flying crew, operations supervisor, or material handler, all military jobs. Tr. 23.

At **step five**, the ALJ determined that, based on the testimony of the vocational expert, and considering Plaintiff's age, education, work experience, and RFC, Plaintiff was capable of performing jobs that existed in significant numbers in the national economy, including the jobs of collator operator, routing clerk, and marker. Tr. 24. The ALJ made additional alternative findings of sedentary jobs that Plaintiff would also be capable of performing. Tr. 25.

The ALJ thus concluded Plaintiff was not under a disability within the meaning of the Social Security Act at any time from the alleged onset date through the date of the decision. Tr. 25-26.

## VI. ISSUES

The question presented is whether substantial evidence supports the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards.

Plaintiff contends the ALJ erred by (1) improperly discrediting Plaintiff's symptom complaints; and (2) improperly considering and weighing the medical opinion evidence.

## VII. DISCUSSION

### A. Plaintiff's Symptom Testimony.

Plaintiff alleges the ALJ erred in rejecting his symptom testimony without providing adequate reasons. ECF No. 18 at 13-14.

It is the province of the ALJ to make determinations regarding a claimant's subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

However, the ALJ's findings must be supported by specific cogent reasons.

*Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative

1 evidence of malingering, the ALJ's reasons for rejecting a claimant's testimony  
2 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281  
3 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General  
4 findings are insufficient: rather the ALJ must identify what testimony is not  
5 credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d  
6 at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

7       The ALJ found Plaintiff's medically determinable impairments could  
8 reasonably be expected to cause the alleged symptoms; however, she found  
9 Plaintiff's statements concerning the intensity, persistence and limiting effects of  
10 his symptoms were not entirely consistent with the medical evidence and other  
11 evidence in the record. Tr. 21. The ALJ found Plaintiff's allegations were not  
12 supported by the objective physical and mental evidence and that his allegations  
13 about his activity level and the need to have his service dog with him at all times  
14 were not reflected in the records. Tr. 22.

15       Plaintiff argues the ALJ improperly discounted his reports of significant  
16 symptoms to his providers and that the ALJ failed to identify activities that  
17 contradicted Plaintiff's testimony. ECF No. 18 at 13-14. Plaintiff further argues  
18 that the ALJ failed to consider the possibility that Plaintiff took his dog with him to  
19 appointments and the providers simply did not reflect this in their chart notes. *Id.*  
20 Defendant argues the ALJ reasonably found Plaintiff's complaints conflicted with  
21 the treatment records and that other statements were at odds with the lack of  
22 documentation in the file. ECF No. 19 at 4-7. Defendant further notes that the ALJ  
23 did not rely on Plaintiff's activities as a basis for disregarding his reports. *Id.* at 8,  
24 n.1.

25       The Court finds the ALJ offered sufficient reasons for discounting Plaintiff's  
26 subjective reports. In assessing a claimant's statements about their symptoms,  
27 including pain, an ALJ may take into consideration the objective medical evidence  
28 along with other evidence, such as the claimant's statements about their symptoms,

1 observations by providers and others, the claimant's daily activities, and any  
2 measures they use to relieve pain or other symptoms. 20 C.F.R.  
3 § 404.1529(c)(3)-(4). Although it cannot serve as the sole ground for rejecting a  
4 claimant's symptom statements, objective medical evidence is a "relevant factor in  
5 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*  
6 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

7 The ALJ found Plaintiff's allegations regarding the need to spend the  
8 majority of his time reclining and to take his service dog with him were not  
9 reflected in the records. Tr. 22. While Plaintiff argues the providers could have  
10 simply failed to document the presence of his dog, the ALJ's interpretation of the  
11 record is reasonable and supported by substantial evidence. Furthermore, while  
12 there are some objective findings in Plaintiff's treatment records that are  
13 supportive of his allegations, "when the evidence is susceptible to more than one  
14 rational interpretation, we must uphold the ALJ's findings if they are supported by  
15 inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104,  
16 1111 (9th Cir. 2012). The ALJ reasonably summarized the records, pointing to the  
17 largely unremarkable findings throughout the record, the numerous times Plaintiff  
18 denied certain symptoms, and the lack of support for marked or more severe  
19 limitations.

20 The Court finds the ALJ offered clear and convincing reasons for  
21 discounting Plaintiff's subjective complaints.

22 **B. Medical Opinions.**

23 Plaintiff contends the ALJ erred by improperly weighing the medical  
24 opinion evidence, asserting that the ALJ should not have relied on the state agency  
25 non-examining opinions, and instead should have relied on the treatment records  
26 and Dr. Reinke. ECF No. 18 at 14-17.

27 For claims filed on or after March 27, 2017, new regulations apply that  
28 change the framework for how an ALJ must evaluate medical opinion evidence.



1 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL  
2 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 404.1520c. The new  
3 regulations provide the ALJ will no longer give any specific evidentiary weight to  
4 medical opinions or prior administrative medical findings, including those from  
5 treating medical sources. 20 C.F.R. § 404.1520c(a). Instead, the ALJ will consider  
6 the persuasiveness of each medical opinion and prior administrative medical  
7 finding, regardless of whether the medical source is an Acceptable Medical Source.  
8 20 C.F.R. § 404.1520c(c). The ALJ is required to consider multiple factors,  
9 including supportability, consistency, the source's relationship with the claimant,  
10 any specialization of the source, and other factors (such as the source's familiarity  
11 with other evidence in the file or an understanding of Social Security's disability  
12 program). *Id.* The regulations make clear that the supportability and consistency of  
13 the opinion are the most important factors, and the ALJ must articulate how they  
14 considered those factors in determining the persuasiveness of each medical opinion  
15 or prior administrative medical finding. 20 C.F.R. § 404.1520c(b). The ALJ may  
16 explain how they considered the other factors, but is not required to do so, except  
17 in cases where two or more opinions are equally well-supported and consistent  
18 with the record. *Id.*

19 Supportability and consistency are further explained in the regulations:

- 20 (1) *Supportability*. The more relevant the objective medical  
21 evidence and supporting explanations presented by a  
22 medical source are to support his or her medical opinion(s)  
23 or prior administrative medical finding(s), the more  
24 persuasive the medical opinions or prior administrative  
25 medical finding(s) will be.
- 26 (2) *Consistency*. The more consistent a medical opinion(s) or  
27 prior administrative medical finding(s) is with the  
28 evidence from other medical sources and nonmedical  
sources in the claim, the more persuasive the medical



1 opinion(s) or prior administrative medical finding(s) will  
2 be.

3 20 C.F.R. § 404.1520c(c). The Ninth Circuit has additionally held that the new  
4 regulatory framework displaces the longstanding case law requiring an ALJ to  
5 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a  
6 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.  
7 2022).

8 The revised regulations further make clear that an ALJ need not provide  
9 “any analysis in our determination or decision about a decision made by any other  
10 governmental agency or a nongovernmental entity about whether you are disabled,  
11 blind, employable, or entitled to any benefits.” 20 C.F.R. § 404.1504. This new  
12 regulation removes any requirement for an ALJ to discuss a VA rating.<sup>2</sup>

13 Plaintiff has not identified any particular medical opinion evidence that he  
14 asserts the ALJ erred in evaluating. ECF No. 18 at 14-17. Simply stating that the  
15 ALJ should have relied on the objective treatment records more does not identify  
16 any error in the ALJ’s assessment of the opinions. Furthermore, the ALJ was not  
17 required to offer any analysis regarding the VA’s 100% disability rating or Dr.  
18 Reinke’s agreement with that rating decision. The Court finds the ALJ did not err.  
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22 <sup>2</sup> The Notice of Proposed Rulemaking accompanying the revised regulations  
23 specifically noted the Ninth Circuit’s ruling in *McCarty v. Massanari*, 298 F.3d  
24 1072 (9th Cir. 2002) and indicated that the new regulations would eliminate the  
25 different approaches taken by different Circuits and unify the application of the  
26 disability process across the nation. Revision to Rules Regarding the Evaluation of  
27 Medical Evidence, Notice of Proposed Rule Making, Fed. Reg. Vol. 81, No. 175  
28 62565 (Sept. 9, 2016).

**VII. CONCLUSION**

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free of legal error and is affirmed. Therefore, **IT IS HEREBY ORDERED:**

1. Defendant's Motion for Summary Judgment, **ECF No. 19**, is **GRANTED**.

2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED September 21, 2022.



  
JAMES A. GOEKE  
UNITED STATES MAGISTRATE JUDGE